

**Filed 12/1/15 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2015 ND 264

Leroy Kenneth Wheeler,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

Nos. 20150113 - 20150115

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Debbie Gordon Kleven, Judge.

AFFIRMED AS MODIFIED.

Per Curiam.

LeRoy K. Wheeler, P.O. Box 5521, Bismarck, N.D. 58206, petitioner and
appellant; on brief.

M. Jason McCarthy and Meredith H. Larson, Assistant State's Attorneys, P.O.
Box 5607, Grand Forks, N.D. 58206-5607, for respondent and appellee; on brief.

Wheeler v. State
Nos. 20150113 - 20150115

Per Curiam.

[¶1] LeRoy Wheeler appeals from an order dismissing his application for post-conviction relief, authorizing the clerk of court for Grand Forks County to refuse to file any further documents in Wheeler’s criminal cases and any future applications for post-conviction relief other than documents related to an appeal in this case, and relieving the State from any obligation to respond to any future motions filed in district court unless the court reviews the motion, determines it has merit, and in writing requests a response. We affirm the order as modified.

I

[¶2] Wheeler argues the retroactive application of a 2013 amendment to the statute of limitations for post-conviction proceedings in N.D.C.C. § 29-32.1-01(2) is unconstitutional. We conclude the 2013 amendments apply to Wheeler’s application for post-conviction relief filed after the effective date of the amendments, and we affirm the order dismissing his application under N.D.R.App.P. 35.1(a)(7) and Lehman v. State, 2014 ND 103, ¶¶ 10-14, 847 N.W.2d 119 (holding 2013 amendment to post-conviction relief statute applies to post-conviction relief proceeding filed after effective date of amendment).

[¶3] Wheeler also argues the district court abused its discretion in prohibiting him from making additional filings in this case.

[¶4] In State v. Holkesvig, 2015 ND 105, ¶¶ 7-12, 862 N.W.2d 531, we recently modified a similar order prohibiting a litigant from filing motions or pleadings in his criminal cases. We explained the Uniform Postconviction Procedure Act, N.D.C.C. ch. 29-32.1, authorizes a district court to dispose of multiple, frivolous post-conviction relief applications, and we modified a district court order to comport with N.D.C.C. ch. 29-32.1 because the order allowed a clerk of court to refuse any filings and appeared to limit the statutory provisions allowing for post-conviction relief. Holkesvig, at ¶ 11.

[¶5] We conclude a similar prohibition is proper here. We modify the district court’s order to comport with N.D.C.C. ch. 29-32.1 as follows: (1) Wheeler can pursue his right to appeal to the North Dakota Supreme Court as provided by the

North Dakota Rules of Appellate Procedure, but he may not file any further motions or pleadings in these cases at the district court level, except after seeking and receiving approval of the presiding judge of the Northeast Central Judicial District, or his designee, to file a proper application under N.D.C.C. § 29-32.1-04 where Wheeler succinctly and concisely establishes an exception to the statute of limitation under N.D.C.C. § 29-32.1-01(3) and is not subject to summary disposition under N.D.C.C. § 29-32.1-09; and (2) the State is relieved from any obligation to respond to any further motions or pleadings filed in district court in these cases, unless the district court reviews the motion or pleading, determines it has merit and, in writing, permits Wheeler's filing and requests a response.

[¶6] We affirm the district court order as modified.

II

[¶7] We affirm the order denying Wheeler's application for post-conviction relief. We modify the order prohibiting Wheeler from filing any further motions or pleadings in these criminal cases and, as modified, we affirm.

[¶8] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Lisa Fair McEvers
Daniel J. Crothers
Dale V. Sandstrom